

Can Dostoyevsky's *Crime and Punishment* Help Us Distinguish Between True and False Confessions?

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I. INTRODUCTION

Dostoyevsky's *Crime and Punishment*¹ is a story about confessions. Raskolnikov, who committed a double murder, and Nikolay, an innocent suspect, each confess to the same crime. The novel illustrates two key aspects of a confession. On the one hand, there is the urge of the offender to confess and the curative effect of the confession. Being a means of healing and rehabilitation, confession provides relief to the soul.² Voluntary confession, according to the traditional view, carries a great weight, as it emanates from the greatest sense of guilt.³ Confession, being the recognition of one's sin, is also conceived as the beginning of repentance.⁴ The confessor approves through the confession that he values the rule transgressed.⁵ Given these aspects, it is not surprising that confession has deep roots in religious beliefs.⁶ In the medieval era, confession was conceived as a means of release from eternal hell.⁷ Even today, confession is viewed as a necessary condition for divine pardon and the salvation of the soul.⁸

On the other hand, false confessions, especially during a custodial interrogation, constitute a major source of miscarriage of justice. Raskolnikov, talking about Nikolay's confession, thought that false confessions were

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¹ FYODOR DOSTOYEVSKY, *CRIME AND PUNISHMENT* (Cynthia Brantley Johnson ed., Pocket Books 2004) (1866).

² See *Miranda v. Arizona*, 384 U.S. 436, 538 (1966) (White, J., dissenting); Amy D. Ronner, *Dostoyevsky and the Therapeutic Jurisprudence Confession*, 40 J. MARSHALL L. REV. 41, 46 (2006).

³ See *Sparf v. United States*, 156 U.S. 51, 55 (1895); Talia Fisher & Issachar Rosen-Zvi, *The Confessional Penalty*, 30 CARDOZO L. REV. 871, 872 (2008).

⁴ See Gerald M. Caplan, *Questioning Miranda*, 38 VAND. L. REV. 1417, 1420 (1985); See also Arne F. Soldwedel, *Testing Japan's Convictions: The Lay Judge System and the Rights of Criminal Defendants*, 41 VAND. J. TRANSNAT'L L. 1417, 1432 (2008) (stating that "the true centerpiece of Japanese criminal justice is the confession, which is considered to be the first step in rehabilitating the criminal and the beginning of the reintegration process").

⁵ Bernard Weiner et al., *Public Confession and Forgiveness*, 59 J. PERSONALITY 281, 284 (1991).

⁶ See SUSAN M. LEVIN, *THE ROMANTIC ART OF CONFESSION* 2-3 (1998).

⁷ See Stefan Trechsel, *Why Must Trials be Fair?* 31 ISR. L. REV. 94, 99 (1997).

⁸ See Weiner et al., *supra* note 5, at 283.

“something inexplicable, amazing—something beyond . . . understanding.”⁹ Although there are no precise data on the occurrence of false confessions and wrongful convictions caused by them,¹⁰ and although some scholars, chief among them Paul Cassell, denigrate its prevalence and importance,¹¹ the danger of false confessions is well known today, thanks, in part, to the Innocence Project.¹²

In the famous *Coffin* ruling,¹³ the United States Supreme Court mentioned an ancient anecdote. According to the tale, a Roman governor was on trial before the Emperor Julian. After hearing the accusations against him, the governor sufficed with a denial of guilt, confident that the prosecutor had not presented sufficient evidence to prove his guilt. Guessing the forthcoming failure of the accusation, the prosecutor exclaimed: “Oh, illustrious Caesar! if [sic] it is sufficient to deny, what hereafter will become of the guilty?” Emperor Julian’s famous reply was, “If it suffices to accuse, what will become of the innocent?”

Alexander Pushkin applied the same logic regarding confessions in his story, *The Captain’s Daughter*:

It was thought that the accused’s own confession was essential for the full exposure of his guilt, an idea not only without foundation but positively contrary to common juridical sense: for if a denial by the accused is not acceptable as proof of innocence, his confession is even less a proof of guilt.¹⁴

⁹ DOSTOYEVSKY, *supra* note 1, at 416.

¹⁰ Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 431–32 (1998) [hereinafter Leo & Ofshe]. Actually, the phenomenon cannot currently be estimated empirically. See Richard A. Leo & Richard J. Ofshe, *Using the Innocent to Scapegoat Miranda: Another Reply to Paul Cassell*, 88 J. CRIM. L. & CRIMINOLOGY 557, 559 (1998).

¹¹ Cassell claims that false confessions as a cause of false convictions are rare. Paul G. Cassell, *Miranda’s “Negligible” Effect on Law Enforcement: Some Skeptical Observations*, 20 HARV. J.L. & PUB. POL’Y 327, 328 (1998) [hereinafter Cassell I]; see also Paul G. Cassell, *Protecting the Innocent from False Confessions and Lost Confessions—And from Miranda*, 88 J. CRIM. L. & CRIMINOLOGY 497, 502, 506–07 (1998) [hereinafter Cassell II] (discussing Miranda’s negative effects on obtaining confessions).

¹² See ANDREW ASHWORTH, *THE CRIMINAL PROCESS* 118 (1994); Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 920–921 (2004); Fisher & Rosen-Zvi, *supra* note 3, at 875–77; Major Peter Kageleiry, Jr., *Psychological Police Interrogation Methods: Pseudoscience in the Interrogation Room Obscures Justice in the Courtroom*, 193 MIL. L. REV. 1, 22–23 (2007); Leo & Ofshe, *supra* note 10, at 430 (opining that “[p]olice elicit false confessions so frequently”); Boaz Sangero, *Miranda Is Not Enough: A New Justification for Demanding “Strong Corroboration” to a Confession*, 28 CARDOZO L. REV. 2791, 2791 (2007); Welsh S. White, *Confessions in Capital Cases*, 2003 U. ILL. L. REV. 979, 983.

¹³ *Coffin v. United States*, 156 U.S. 432, 455 (1895).

¹⁴ ALEXANDER PUSHKIN, *The Captain’s Daughter*, in *QUEEN OF SPADES AND OTHER STORIES* 101, 146 (Andrew Kahn ed., Alan Myers trans., Oxford Univ. Press 1997) (1836).

In other words: an assumption according to which it is enough to confess in order to be convicted, but not enough to deny (in the absence of evidence) in order to be acquitted, may harm the innocent.

Despite Pushkin's logic, confession bears damaging consequences in the normal case.¹⁵ We are more believable when telling bad things about ourselves than good things. This common assumption, however, loses much of its validity (if it has any, since there are persons who tend to belittle themselves) under conditions of police interrogation.

An analysis of Raskolnikov's and Nikolay's separate confessions demonstrates the complexity of the motives that drive people, the guilty and innocent alike, to confess to a crime. This analysis points to the distinction between true and false confessions. In general, the novel supports the conclusion that the accused should be required to provide significant details of the crime as a requirement for relying on that person's confession.

Part II of this paper describes the process that Raskolnikov, the actual murderer, undergoes until his confession at the police station, and offers various reasons for his decision to confess. This part is a literary (psychologically based) analysis. Part III analyzes Nikolay's false confession, which was a custodial confession, against the background of the police interrogation. Part IV examines the suggestion to require corroboration as a condition for obtaining a conviction on the basis of extrajudicial confession: the argument is advanced that, although highly desirable, it is not enough to distinguish between true and false confessions. Part V advises that significant knowledge of the facts of the crime should be a necessary requirement for relying on extrajudicial confession. Confession that does not demonstrate significant knowledge of the facts of the crime should not be admitted as evidence.

II. RASKOLNIKOV'S CONFESSION

In the novel, Raskolnikov arrives at the police station and declares: "It was I [who] killed the old pawnbroker woman and her sister Lizaveta with an axe and robbed them."¹⁶ From a legal point of view, his confession is undoubtedly voluntary. What motivated Raskolnikov into making this confession, which is likely to send him to a Siberian prison for many years?

Raskolnikov's confession actually manifested a peak of his inner struggle. The inner torture that he experienced began soon after the thought of committing the murder had taken hold. This internal struggle is waged between the loathing that Raskolnikov feels toward the very commission of the murder and his

¹⁵ See RICHARD A. LEO, POLICE INTERROGATION AND AMERICAN JUSTICE 266 (2008).

¹⁶ DOSTOYEVSKY, *supra* note 1, at 621 (emphasis omitted).

ideas regarding the possible utility to the public at large ensuing from the murder.¹⁷

The murder, however, exacerbates Raskolnikov's torment. Immediately after the event, he is torn between the desire to confess and turn himself in, on the one hand, and the urge to survive, on the other. He fears confession and longs for it at the same time.¹⁸ In this regard, Raskolnikov may resemble other criminals. "It is clear that in the criminal two mental forces are fighting for supremacy," Theodor Reik believes. "One tries to wipe out all traces of the crime, the other proclaims the deed and the doer to the whole world."¹⁹

Raskolnikov could easily have escaped punishment. Nobody had noticed him near the scene of the crime. He murdered Lizaveta, the pawnbroker's sister, the only eyewitness. Techniques of forensic science, such as fingerprinting, let alone DNA, did not exist in the middle of the nineteenth century.²⁰ Indeed, Raskolnikov believes that the evidence that Porfiry, the examining magistrate, has against him is enough only to arrest him but not to charge him and certainly not to convict him. As he tells Sonia:

They've no real evidence. . . . All the facts they know can be explained two ways, that's to say I can turn their accusations to my credit. . . . But they will certainly arrest me. . . . But that's no matter, Sonia: they'll let me out again . . . for there isn't any real proof against me, and there won't be, I give you my word for it. And they can't convict a man on what they have against me.²¹

Raskolnikov also takes steps to hide his crime. He washes the bloodstains from his clothes and the murder weapon, the axe,²² which he returns to its former place,²³ and he hides the stolen goods in a safe place under a stone.²⁴ He resists Porfiry's implicit attempts to incriminate him. Thus, for example, when talking about the article that Raskolnikov wrote, Porfiry guesses that perhaps Raskolnikov deems himself one of those extraordinary persons who is entitled to commit

¹⁷ DOSTOYEVSKY, *supra* note 1, at 9. In fact, the reasons that drove Raskolnikov to murder are complex and not very clear. See GARY COX, *CRIME AND PUNISHMENT: A MIND TO MURDER* 42–43 (1990); Ronner, *supra* note 2, at 82–86.

¹⁸ Ronner, *supra* note 2, at 89.

¹⁹ THEODOR REIK, *THE COMPULSION TO CONFESS: ON THE PSYCHOANALYSIS OF CRIME AND PUNISHMENT* 49–50 (Grove Press 1961) (1959).

²⁰ Dan E. Stigall, *Prosecuting Raskolnikov: A Literary and Legal Look at "Consciousness of Guilt"* *Evidence*, 27 *ARMY LAW* 54, 54 (2005).

²¹ DOSTOYEVSKY, *supra* note 1, at 492.

²² *Id.* at 98–99.

²³ *Id.* at 106.

²⁴ *Id.* at 131.

offenses under certain circumstances: "And, if so, could you bring yourself in case of worldly difficulties and hardship or for some service to humanity—to overstep obstacles? . . . For instance, to rob and murder?" Raskolnikov replies defiantly and contemptuously, "If I did I certainly should not tell you."²⁵

At the same time, however, Raskolnikov plants evidence against himself much before his confession.²⁶ We have many indications that he actually wants to get caught, making unconscious efforts to fail. He begins his plan late because of the deep sleep into which he had fallen,²⁷ and he forgets to lock the victim's door during the commission of the murder.²⁸ Actually, Raskolnikov's habit of leaving his door unlocked is an indication of an unconscious desire to confess his sin.²⁹

Upon meeting Zematov, the head clerk of the police station, at a tavern, Raskolnikov is on the verge of confessing and initiates a conversation about the murder, saying among other things, "Perhaps I know more about it than you do."³⁰ Pointing to the newspapers around him, he talks like one who is being interrogated:

I declare to you . . . no, better, 'I confess' . . . No, that's not right either; 'I make a deposition and you take it,' I depose that I was reading, that I was looking and searching . . . and came here on purpose to do it—for news of the murder of the old pawnbroker woman.³¹

Zematov, though suspicious, does not clearly understand: "What if you have been reading about it? . . . What of it?"³²

Raskolnikov continues to implicate himself: "The same old woman . . . about whom you were talking in the police-office, you remember, when I fainted. Well, do you understand now?"³³ Zamatov still cannot fully understand: "What do you mean? Understand . . . what?"³⁴ But the idea crawls into his mind: "You are either mad, or . . .," refusing to complete the idea.³⁵ Raskolnikov carries on, playing between confession and taunt. After describing how he would have misled

²⁵ *Id.* at 312.

²⁶ EDWARD WASIOLEK, DOSTOEVSKY: THE MAJOR FICTION 70–71 (1964); S.C. Burchell, *Dostoevsky and the Sense of Guilt*, 17 PSYCHOANALYTIC REV. 195, 202 (1930); Ronner, *supra* note 2, at 87.

²⁷ DOSTOEVSKY, *supra* note 1, at 82–84.

²⁸ *Id.* at 99.

²⁹ COX, *supra* note 17, at 110.

³⁰ DOSTOEVSKY, *supra* note 1, at 190.

³¹ *Id.* at 191.

³² *Id.* at 192.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

the interrogators after the event were he the murderer,³⁶ he defiantly asks: "And what if it was I who murdered the old woman and Lizaveta?"³⁷ Immediately thereafter, he blames Zametov for believing such a possibility.³⁸ Upon the latter's denial, Raskolnikov urges him to think where the money in his hand and his new clothes came from (we know they came from his mother).³⁹ The conversation attracts Zametov's suspicion, who then reports it to Porfiry.⁴⁰

Moreover, Raskolnikov returns to the pawnbroker's flat after the murder.⁴¹ A compulsive return to the scene of the crime is a recognized psychological phenomenon.⁴² Raskolnikov, however, is not only drawn to come back, but he betrays himself almost completely through his strange behavior and conversation. He tries to reconstruct his deed by ringing the bell.⁴³ When a workman asks him who he is, he answers, "You want to know? Come to the police station, I'll tell you."⁴⁴ He reveals his identity on this occasion to the porter and other bystanders.⁴⁵

It is natural that we wish to confess our vulnerabilities and bad deeds to someone close. It is hard to bear secrets. Closeness with others means allowing them to get to know you.⁴⁶ As Jung tells us, a person "does not feel himself accepted unless the very worst in him is accepted too."⁴⁷ "The maintenance of secrets acts like a psychic poison,"⁴⁸ severing the possessor of the secret from his fellow-beings.⁴⁹ Raskolnikov breaks with his mother and sister. He avoids touching even Dounia's hand, thinking that she would feel he had stolen her kiss if she knew about the heinous murder.⁵⁰ Not revealing the hidden parts of himself separates Raskolnikov not only from his family but also from the rest of the world. After the murder, Raskolnikov in fact feels "a mystical awareness of his

³⁶ *Id.* at 195-96.

³⁷ *Id.* at 196.

³⁸ *Id.*

³⁹ *Id.* at 197.

⁴⁰ *Id.* at 300, 528.

⁴¹ *Id.* at 202-06.

⁴² REIK, *supra* note 19, at 55-61; Burchell, *supra* note 26, at 203.

⁴³ DOSTOYEVSKY, *supra* note 1, at 204.

⁴⁴ *Id.* at 205.

⁴⁵ *Id.* at 206.

⁴⁶ Robert F. Cochran, Jr., *Crime, Confession, and the Counselor-at-Law: Lessons from Dostoyevsky*, 35 HOUS. L. REV. 327, 363 (1998).

⁴⁷ C.G. JUNG, MODERN MAN IN SEARCH OF A SOUL 270 (W.S. Dell & Cary F. Baynes trans., 1933).

⁴⁸ *Id.* at 35.

⁴⁹ *Id.* at 35-36.

⁵⁰ DOSTOYEVSKY, *supra* note 1, at 497.

estrangement from the human family.”⁵¹ In such a situation, Jung relates, “[i]t is only with the help of confession that I am able to throw myself into the arms of humanity freed at last from the burden of moral exile.”⁵² Therefore, in order to maintain his being part of the world and to free himself of loneliness, Raskolnikov confesses; first, indirectly through a penetrating look at his good friend, Razumihin,⁵³ and then explicitly to Sonia,⁵⁴ whom he hardly knew at the time, but whose self-sacrifice, goodness, and purity he recognizes.

Although “[t]he immediate consequence of this encounter with moral-social isolation, of his exile from the human community, is an overwhelming impulse to confess to the humane police officer Nikodim Fomich,”⁵⁵ it is far from obvious that this natural connection between people who are close to each other may be transferred to the interrogator at the police station. The interrogator may be hostile, is hardly perceived as a friend, and is probably going to harm the confessor. Moreover, at the time of his confession Raskolnikov has already revealed his secret to Sonia and to Dounia and there was, no reason for him to share his secret with police officers to overcome any sense of loneliness.

Why, then, does Raskolnikov decide to confess at the police station? It is not clear. Raskolnikov himself does not completely understand why he decides to confess. On the same day that he goes to the police station, he says to his sister Dounia: “I am going at once to give myself up. But I don’t know why. . . .”⁵⁶ He still insists that he actually committed no crime by killing the old pawnbroker, and that his deed was justified on utilitarian grounds.⁵⁷

Despite these declarations to Dounia, we have indications that Raskolnikov did repent his crime. One day after the murder, he views his deed as a “base, filthy, degrading business.”⁵⁸ To Sonia, he exclaims: “Did I murder that old woman? I murdered myself, not her! . . . [I]t was the devil that killed the old woman, not I.”⁵⁹ On the way to making his confession at the police station, he kneels down and kisses the earth, as Sonia ordered him to do.⁶⁰ At the trial, he claims that repentance was the reason for his confession.⁶¹

⁵¹ Konstantin Mochulsky, *Crime and Punishment: A Novel Tragedy in Five Acts*, in *CRITICAL ESSAYS ON DOSTOEVSKY* 90, 95 (Robin Feuer Miller ed., 1986); see also JOSEPH FRANK, *DOSTOEVSKY: THE MIRACULOUS YEARS, 1865–1871* at 64 (1995).

⁵² JUNG, *supra* note 47, at 41.

⁵³ DOSTOEVSKY, *supra* note 1, at 369. He later decided he was mistaken. *Id.* at 520.

⁵⁴ *Id.* at 479.

⁵⁵ FRANK, *supra* note 51, at 114–15.

⁵⁶ DOSTOEVSKY, *supra* note 1, at 605.

⁵⁷ *Id.* at 605–06.

⁵⁸ *Id.* at 132.

⁵⁹ *Id.* at 489–90.

⁶⁰ *Id.* at 614.

⁶¹ *Id.* at 625.

Even if he did regret his crime, it is not clear whether Raskolnikov was overwhelmed with pangs of conscience. We are told that he became ill in prison because of his wounded pride and that, in fact, he did not actually repent his crime.⁶² On the contrary, he wishes he could have felt remorse: "Oh, how happy he would have been if he could have blamed himself! . . . But he judged himself severely, and his exasperated conscience found no particularly terrible fault in his past. . . ."⁶³ Raskolnikov admits at this stage to a mistake, not to a sin.⁶⁴ He admits to himself the wrongness of his crime and his theory only after having a dream in the prison hospital about microbes that destroyed the world,⁶⁵ and only then is he able to achieve self-reconciliation.

Perhaps, even without full remorse, people just have a compulsion to confess. Such a compulsion is a recognized phenomenon in psychological literature.⁶⁶ Through confession, the confessor wants to regain the love he lost.⁶⁷ Even the failing of talking too much involves the same compulsion.⁶⁸ Given the fact that people are used to confessing their vulnerabilities to friends and therapists, then "[a] criminal confession is simply an extreme manifestation of normal behavior."⁶⁹ Moreover, some scholars suggest the possibility that Raskolnikov committed the murder in order to confess, be punished, and repent.⁷⁰ Indeed, according to Freudian psychological theory, the unconscious feeling of guilt may bring about the commission of a crime in order to connect the unfocused feeling to a real deed and satisfy this feeling through punishment.⁷¹ We find support for this far-reaching theory in Raskolnikov's anticipation of making a confession. The first time in Sonia's flat, he says to her,

I know [who killed Lizavéta] and will tell . . . you, only you. I have chosen you out. I'm not coming to you to ask forgiveness, but simply to

⁶² *Id.* at 633-34.

⁶³ *Id.* at 633.

⁶⁴ David Kiremidjian, *Crime and Punishment: Matricide and the Woman Question*, 33 AM. IMAGO 403, 420 (1976).

⁶⁵ DOSTOYEVSKY, *supra* note 1, at 638.

⁶⁶ See REIK, *supra* note 19, at 180, 194.

⁶⁷ REIK, *supra* note 19, at 208.

⁶⁸ *Id.* at 229.

⁶⁹ Corey John Ayling, Comment, *Corroborating Confessions: An Empirical Analysis of Legal Safeguards Against False Confessions*, 1984 WIS. L. REV. 1121, 1177.

⁷⁰ See WASIOLEK, *supra* note 26, at 75-76; see also Ronner, *supra* note 2, at 88.

⁷¹ 14 SIGMUND FREUD, *Criminals From a Sense of Guilt*, in THE STANDARD EDITION OF THE COMPLETE WORKS OF SIGMUND FREUD 332, 332 (James Strachey trans.) (1957). See also PETER BROOKS, TROUBLING CONFESSIONS: SPEAKING GUILT IN LAW AND LITERATURE 74 (2000); REIK, *supra* note 19, at 474; Peter Brooks, *Storytelling Without Fear? Confessions in Law & Literature*, 8 YALE J.L. & HUMAN. 1, 15 (1996) [hereinafter *Storytelling*]; Burchell, *supra* note 26, at 195, 201.

tell you. I chose you out long ago to hear this, when your father talked of you and when Lizaveta was alive, I thought of it.⁷²

Moreover, we cannot deny the possibility that Raskolnikov killed to prove unconsciously the fault of his theory and to restore the moral and religious values that misguided reason had blinded him from recognizing. Whereas the rational adult Raskolnikov justifies the murder of an old woman on utilitarian grounds, the dream of a mare cruelly beaten to death exposed the young Raskolnikov to be a child who was shocked by murder.⁷³

We may think of many further possible reasons for Raskolnikov's decision to confess, beyond repentance or anticipated repentance. Perhaps he did not want to be viewed as timid by those who knew of his crime—Sonia, Dounia, Svidrigailov, and Porfiry. When Porfiry teases Raskolnikov by asking him whether he was afraid of bearing the consequences of confession, he says to him, "Why, is it the bourgeois disgrace you are afraid of? . . . 'Ach, hang it!' Raskolnikov whispered with loathing and contempt."⁷⁴

Perhaps Raskolnikov's confession was his way of becoming close to Sonia, the woman he loves and trusts. Right after confessing to her, Raskolnikov asks Sonia, "[W]hat am I to do now?" She answers resolutely, "Go at once, this very minute, stand at the cross-roads, bow down, first kiss the earth which you have defiled and then bow down to all the world and say to all men aloud, 'I am a murderer!' Then God will send you life again."⁷⁵ Rejecting the possibility at this point, Raskolnikov tries to soften Sonia's message: "You mean Siberia, Sonia? I must give myself up?" But she does not allow him to do so: "Suffer and expiate your sin by it, that's what you must do."⁷⁶ Before going to the police station, Raskolnikov is not able to see Sonia, since "[h]e was afraid of Sonia, too. Sonia stood before him as an irrevocable sentence. He must go his own way or hers."⁷⁷ Indeed, he goes to the police station to confess, but leaves it without confessing.⁷⁸ Then, seeing Sonia's "look of poignant agony, of despair, in her face," and further realizing her disappointment, he returns and confesses his crime.⁷⁹

The constant fear of getting caught may also have motivated Raskolnikov's confession. He wonders whether the police already knew that he was the murderer and what evidence Porfiry has against him.⁸⁰ Thus, he is suddenly alarmed by the

⁷² DOSTOYEVSKY, *supra* note 1, at 388.

⁷³ FRANK, *supra* note 51, at 106.

⁷⁴ DOSTOYEVSKY, *supra* note 1, at 536.

⁷⁵ *Id.* at 490.

⁷⁶ *Id.*

⁷⁷ *Id.* at 540.

⁷⁸ *Id.* at 616–20.

⁷⁹ *Id.* at 620.

⁸⁰ *Id.* at 152.

idea that he mistakenly left some of the victim's goods in his room and returns to search it frantically—"his hair was soaked with sweat and he was breathing heavily"—instead of dining, as planned, with his mother and sister.⁸¹ Porfiry's description of his general tactics regarding certain suspects touches on Raskolnikov's deepest fears: "If I leave one man quite alone . . . but let him know or at least suspect every moment that I know all about it and am watching him day and night," Porfiry offers, "he'll be bound to lose his head . . . Freedom will lose its attractions."⁸² Raskolnikov is aware that a simple, unnoticed thing may expose him, and that there is no perfect crime.⁸³ At any moment, he expects to be officially interrogated.⁸⁴ How long could a person endure such a life?

And perhaps Raskolnikov's confession stemmed from a sense of failure, despair, and confusion.⁸⁵ He actually suggests this explanation to Dounia.⁸⁶ He turns himself in because he feels weak and talentless.⁸⁷ He recognizes his failure to live according to his own ideals.⁸⁸ His reactions to the murder and to the investigation have demonstrated to him that he is not the strong, extraordinary person he had imagined. In his condition, trapped in sickness, delusions, obsessive thoughts, depression, isolation, and panic attacks, he can see no other way ahead of him. Raskolnikov does not sacrifice his freedom because he has not enjoyed it since the murder.

Sonia represents the good angel and the belief in God and Christ, whereas Svidrigailov, the unscrupulous person who tries to sexually harass Dounia, embodies the bad angel and the belief in self.⁸⁹ Svidrigailov is the prototypical, strong Napoleonic person who can overcome all moral obstacles without feelings of guilt—in other words, the person Raskolnikov imagined himself to be before the commission of the murder.⁹⁰ Svidrigailov's way also contrasts with Porfiry's. Both men tell Raskolnikov that he needs air. Svidrigailov makes this recommendation: "[W]hat all men need is fresh air, fresh air . . . more than anything!"⁹¹ The same day, after accusing Raskolnikov openly and urging him to confess, Porfiry uses the same words: "What you need now is fresh air, fresh air,

⁸¹ *Id.* at 319.

⁸² *Id.* at 399–400.

⁸³ *Id.* at 318, 322.

⁸⁴ *Id.* at 171.

⁸⁵ See COX, *supra* note 17, at 125.

⁸⁶ DOSTOYEVSKY, *supra* note 1, at 605–06.

⁸⁷ LESLIE A. JOHNSON, THE EXPERIENCE OF TIME IN *CRIME AND PUNISHMENT* 49 (1984).

⁸⁸ John Tasioulas, *Repentance and the Liberal State*, 4 OHIO ST. J. CRIM. L. 487, 491 (2006).

⁸⁹ See Mochulsky, *supra* note 51, at 92; WASIOLEK, *supra* note 26, at 80–81.

⁹⁰ Napoleon symbolizes for Raskolnikov a great person who is ready to pay a huge cost in terms of harm to others in order to fulfill his idea: DOSTOYEVSKY, *supra* note 1, at 305–07, 484.

⁹¹ DOSTOYEVSKY, *supra* note 1, at 513.

fresh air!"⁹² Porfiry promises a renewed life after submitting to punishment.⁹³ Svidrigailov suggests escaping to America.⁹⁴ But Svidrigailov's way leads to suicide. He connects America and his approaching death in the conversation with the soldier that occurs a moment before pulling the trigger of the revolver: "I am going to foreign parts, brother." "To foreign parts?" "To America." "America?" Svidrigailov took out the revolver and cocked it."⁹⁵

What happened to Raskolnikov that made him leave the police station without confessing upon hearing about Svidrigailov's suicide? Perhaps he realized that death was an option for him, too. Perhaps Svidrigailov's suicide decreased Raskolnikov's motivation to confess after the danger of blackmail and of revealing his secret to the police had disappeared (Svidrigailov, who listened to Raskolnikov's confession to Sonia behind the door, was the only person who might betray Raskolnikov). The strongest point, however, is that Svidrigailov's death symbolizes the death of his way. Only Sonia and her belief in God remain as does Porfiry, Raskolnikov's accusing side.

Porfiry, the clever investigator, conveys to Raskolnikov the message that Raskolnikov will eventually break down under the storm of his own feelings. Not a typical interrogator, Porfiry is not only very intelligent, but also endowed with a deep psychological understanding of a human being's soul.⁹⁶ He actually respects Raskolnikov with all his complex characteristics as a human being.⁹⁷ In their third encounter, he is honest with Raskolnikov, to whom he speaks openly and candidly.⁹⁸ After Raskolnikov asks Porfiry, "[t]hen . . . who then . . . is the murderer?"⁹⁹ With genuine conviction, Porfiry answers in words reminiscent of those exclaimed by the Prophet Nathan to King David: "That man is you!"¹⁰⁰ Porfiry answers: "Why, *you*, Rodion Romanovitch! You are the murderer . . ."¹⁰¹ Porfiry urges Raskolnikov to "surrender and confess," telling him that his confession would be to both their advantages¹⁰² and promising that the sentence

⁹² *Id.* at 537.

⁹³ *Id.* at 535–36.

⁹⁴ *Id.* at 566.

⁹⁵ *Id.* at 597.

⁹⁶ See Ronner, *supra* note 2, at 90.

⁹⁷ See FRANK, *supra* note 51, at 138; see also Ronner, *supra* note 2, at 101. We should also recall that Porfiry respected his word and did not reveal the suspicions he had against Raskolnikov. DOSTOYEVSKY, *supra* note 1, at 625. There are scholars who see Porfiry's character differently and criticize him for his "sadism." JOHNSON, *supra* note 87, at 91.

⁹⁸ DOSTOYEVSKY, *supra* note 1, at 524, 526.

⁹⁹ *Id.* at 532.

¹⁰⁰ 2 Samuel 12:7.

¹⁰¹ DOSTOYEVSKY, *supra* note 1, at 532.

¹⁰² *Id.* at 534.

would be reduced in exchange for a confession.¹⁰³ Porfiry expresses belief in Raskolnikov's ability to be regenerated and to have a promising future after the release from prison.¹⁰⁴ At the same time, however, he makes it clear that Raskolnikov will not escape: "'Your lip,' he told him, 'is twitching just as it did before.'"¹⁰⁵ Porfiry tries his best not to coerce Raskolnikov, but to convince him that confession is the morally correct act. He does not place Raskolnikov under arrest immediately after accusing him of the murder; rather, he leaves Raskolnikov with enough leeway to make this crucial decision—which Porfiry knew he would make.¹⁰⁶

All of the possible reasons that I have mentioned for Raskolnikov's confession may fuse together to present a process of coping with the crime and his reactions to it. And, indeed, Raskolnikov stood behind his confession and pled guilty at the trial.¹⁰⁷

We will turn now to an analysis of Nikolay's confession.

III. NIKOLAY'S CONFESSION

Nikolay was the immediate suspect. He was at the scene of the crime because he worked as a painter on the second floor of the building where it was committed (the murder took place on the fourth floor). He did not show up for work on the day after the murder (probably because he had been drinking heavily).¹⁰⁸ Immediately after the murder, he sold a piece of jewelry that had belonged to the murder victim that had been stolen during the commission of the murder.¹⁰⁹ (We actually know that Raskolnikov accidentally dropped it while hiding in the empty second-floor flat.¹¹⁰) Nikolay, furthermore, lied to the buyer, telling him that he had found the jewel on the street.¹¹¹ When the buyer told him about the murder, Nikolay tried to commit suicide.¹¹²

Why did Nikolay confess to a murder of which he was innocent? Since the story does not focus on the investigation of the crime, but rather on its psychological effects, we do not know the exact reason for his false confession.

¹⁰³ *Id.* at 535.

¹⁰⁴ *Id.* at 535–36.

¹⁰⁵ *Id.* at 532.

¹⁰⁶ Ronner, *supra* note 2, at 110.

¹⁰⁷ DOSTOYEVSKY, *supra* note 1, at 623.

¹⁰⁸ *Id.* at 163.

¹⁰⁹ *Id.* at 162.

¹¹⁰ *Id.* at 104–05. See *id.* at 165–66, for Nikolay's initial story.

¹¹¹ *Id.* at 162.

¹¹² *Id.* at 164.

We may guess, however, that Nikolay's confession has emanated from a combination of two reasons.

Porfiry believes that Nikolay confessed to purify himself of some general guilt, and that he wanted to accept agony upon himself, since he recalled his religious studies.¹¹³ Nikolay, though, was not depressed. He had been playing like a child with another painter at the time of the murder: they were running after each other, laughing, and hitting each other in a friendly way.¹¹⁴ Porfiry himself describes Nikolay as a person who "sings and dances, he tells stories, they say, so that people come from other villages to hear him."¹¹⁵

It is more plausible that the central explanation for Nikolay's confession is reflected in Raskolnikov's words to Porfiry after Nikolay had made a confession:

[Y]our office is such a comical one . . . how you must have been torturing . . . that poor Nikolay psychologically . . . till he confessed! You must have been at him day and night, proving to him that he was the murderer, and now that he has confessed, you'll begin vivisectioning him again. 'You are lying,' you'll say. 'You are not the murderer!' . . . You must admit it's a comical business!¹¹⁶

And, indeed, although there are various reasons for this behavior, "making a false confession is largely associated with police pressure. . . ."¹¹⁷

Confessions play a central role in the criminal process. The police interrogation is actually designed to elicit confessions from suspects.¹¹⁸ After all, persuading suspects to confess is a cheap and fast way to solve crimes. As Stephen put it, "it is far pleasanter to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence."¹¹⁹ Indeed, police interrogations quite often succeed in producing confessions.¹²⁰

Some scholars treat confessions suspiciously, opining that a rational person would not confess unless under pressure.¹²¹ Grave doubts have been expressed as

¹¹³ *Id.* at 530–31.

¹¹⁴ *Id.* at 165–66.

¹¹⁵ *Id.* at 530.

¹¹⁶ *Id.* at 415.

¹¹⁷ GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* 210 (2003).

¹¹⁸ See Sangero, *supra* note 12, at 2815.

¹¹⁹ Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12, 17 (1910) (citing 1 JAMES FITZJAMES STEPHEN, *A HISTORY OF THE CRIMINAL LAW OF ENGLAND* 441 (1883)).

¹²⁰ Rinat Kitai-Sangero, *Detention for the Purpose of Interrogation as Modern "Torture,"* 85 U. DET. MERCY L. REV. 137, 138 (2008).

¹²¹ *Id.* at 148.

to whether repentance underlay confession,¹²² and why was it that accused persons against whom the evidence was weak were flooded with feelings of remorse.¹²³

Most confessions, like Nikolay's, are obtained during interrogation.¹²⁴ The psychological phenomenon of confession cannot, therefore, be detached from the process by which it is obtained.¹²⁵ Interrogation manuals shed light on this process. These manuals conclude that an accused person will not confess out of shame and that his fear of confessing should be overcome.¹²⁶ The interrogator must convince the accused that confession is rational and desirable.¹²⁷ To achieve this goal, various tactics must be employed,¹²⁸ such as suffocating the accused person's denials,¹²⁹ pretending to gain overwhelming evidence against the one being interrogated,¹³⁰ faking sympathy and understanding for the crime,¹³¹ and trying to blur the adversary nature of the interrogation.¹³² These tactics, however, though "[i]ntended for the guilty . . . are psychologically powerful enough to elicit confessions from the innocent."¹³³

Furthermore, the United States Supreme Court described in *Miranda v. Arizona* the environment in which custodial interrogation generally takes place.¹³⁴ It showed how custodial interrogation in itself operates to undermine an accused person's will to resist.¹³⁵ Detention isolates the accused from family, friends, and place of work, detaches her from daily activities, and causes a suspect to lose control of one's life.¹³⁶ This isolation helps the interrogators to elicit confessions.¹³⁷ Moreover, most people have a tendency to obey the demands of

¹²² DAVID WOLCHOVER & ANTHONY HEATON-ARMSTRONG, WOLCHOVER AND HEATON-ARMSTRONG ON CONFESSION EVIDENCE 11 (1996).

¹²³ *Id.* at 13.

¹²⁴ *Id.* at 65.

¹²⁵ *Id.*

¹²⁶ *Id.* at 66; see GUDJONSSON, *supra* note 117, at 10–11.

¹²⁷ Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. L. REV. 979, 985 (1997).

¹²⁸ GUDJONSSON, *supra* note 117, at 10–13.

¹²⁹ LEO, *supra* note 15, at 136–138.

¹³⁰ *Id.* at 139–140.

¹³¹ WOLCHOVER & HEATON-ARMSTRONG, *supra* note 122, at 70; Deborah Young, *Unnecessary Evil: Police Lying in Interrogations*, 28 CONN. L. REV. 425, 430–31 (1996).

¹³² Richard A. Leo, *Questioning the Relevance of Miranda in the Twenty-First Century*, 99 MICH. L. REV. 1000, 1019 (2001).

¹³³ Drizin & Leo, *supra* note 12, at 918.

¹³⁴ *Miranda v. Arizona*, 384 U.S. 436, 450–55 (1966).

¹³⁵ *Id.* at 455, 457, 465.

¹³⁶ Kitai-Sangero, *supra* note 120, at 139.

¹³⁷ Wayne T. Westling, *Something Is Rotten In the Interrogation Room: Let's Try Video Oversight*, 34 J. MARSHALL L. REV. 537, 537 (2001).

persons of authority.¹³⁸ This tendency is exacerbated under conditions of custodial interrogation, which creates a psychological reality in which the accused person conceives herself to be, like a slave, in a position of "submission to authority."¹³⁹ This submission seriously violates the accused person's ability to make rational decisions.¹⁴⁰ Actually, detention itself may lead normal persons into pathological situations.¹⁴¹ It is no wonder that employing psychological tactics aiming to break an accused person's resistance falls on fertile ground in circumstances of custodial interrogation.

Given the circumstances of custodial interrogation, we may guess how Nikolay's interrogators drove him to make a confession. Did they show confidence in his guilt? Did they rule out as nonsense every explanation that he offered and make him believe that there was no point in maintaining his innocence? Did they shatter his confidence and undermine his reliability after catching him in an overt lie? When Nikolay was asked why he was playing with the other painter immediately after the murder, he replied that he did it to distract people from his deed. Porfiry, convinced of Nikolay's innocence, mutters when hearing this explanation, "It's not his own tale he is telling."¹⁴² Porfiry's disappointment notwithstanding, "[he] would not have had to look far to put the blame, for it was surely the prospect of the investigation, Porfiry's own area of expertise, which drove Mikolaj [Nikolay] to despair."¹⁴³ It is only logical to assume that the interrogators, probably guided by Porfiry, blamed Nikolay to distraction, and he mechanically reiterated what they said, becoming confused and desperate when he realized what appeared to be the strength of the case against him. Nikolay was not a strong person. His initial reaction to the accusations was an attempt to commit suicide rather than to defy them. He probably belongs to the category of false confessors who try to avoid confrontation and to appease others, especially persons of authority.¹⁴⁴ We should also recall that the likelihood of obtaining a confession increases the longer the interrogation lasts,¹⁴⁵ and that the

¹³⁸ Adrian J. Barrio, Note, *Rethinking Schneckloth v. Bustamonte: Incorporating Obedience Theory into the Supreme Court's Conception of Voluntary Consent*, 1997 U. ILL. L. REV. 215, 241–42. For an instructive example, see BROOKS, *supra* note 71, at 151.

¹³⁹ Alan Hirsch, *Threats, Promises, and False Confessions: Lessons of Slavery*, 49 HOW. L.J. 31, 50 (2005).

¹⁴⁰ *Id.* at 50–51.

¹⁴¹ Ayling, *supra* note 69, at 1164–66.

¹⁴² DOSTOYEVSKY, *supra* note 1, at 413.

¹⁴³ JOHNSON, *supra* note 87, at 87.

¹⁴⁴ For this kind of false confessor, see Hirsch, *supra* note 139, at 53.

¹⁴⁵ Richard Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 292 (1996).

police tend to exert more pressure to obtain a confession in cases of a serious offense like murder.¹⁴⁶

Nikolay's initial denial of guilt¹⁴⁷ demonstrates that self-destruction was not his motive for confessing. Nevertheless, to the pressures of custodial interrogation we may add the influence of feelings of a general and unfocused or "free-floating" guilt. Philosophers described this feeling:

Then who could ever be confident that sometime, somewhere, somehow he did not commit some species of crime? Each of us would probably be guilty in one particular or another; and since we could never certainly know the limits of our particular guilts—it may have been some indiscreet phrase or equivocal intonation—we must all experience the state of general guilt.¹⁴⁸

After all, "[w]e violate justice continuously in myriads of ways personally and socially. Or, put slightly differently, we are constantly offending others and distorting human relations among us. Human beings are continuously in need of redemption, forgiveness, and restoration."¹⁴⁹ So even if we do not follow Freud's thesis, according to which "this obscure sense of guilt [is] derived from the Oedipus complex and was a reaction to the two great criminal intentions of killing the father and having sexual relations with the mother,"¹⁵⁰ we may agree that everyone is surely guilty of something. We may also feel guilt because we do not fulfill ourselves in the way we dreamed, or because we broke up with certain persons. This sense of guilt may reflect a failure of the "realization of self."¹⁵¹ The feeling of general, unfocused guilt may cause individuals to confess falsely out of an unconscious need for punishment or for redemption through submitting to suffering.¹⁵² Is it not true, as Cox assumes, that "we, too, as readers, have become accessories to the crime by our identification with Raskolnikov"?¹⁵³ Why do we not feel pity for the old pawnbroker upon reading the description of the murder?

¹⁴⁶ White, *supra* note 12, at 990.

¹⁴⁷ DOSTOYEVSKY, *supra* note 1, at 165.

¹⁴⁸ EDMOND N. CAHN, *THE SENSE OF INJUSTICE* 154 (1949). Of generalized guilt and the need for punishment, see GUDJONSSON, *supra* note 117, at 195; *see also* O. JOHN ROGGE, *WHY MEN CONFESS* 210–22 (1959).

¹⁴⁹ Stanley S. Harakas, *Forgiveness and Reconciliation: An Orthodox Perspective*, in *FORGIVENESS AND RECONCILIATION* 51, 70 (Raymond G. Helmick, S.J., & Rodney L. Petersen eds., 2001).

¹⁵⁰ FREUD, *supra* note 71, at 332–33.

¹⁵¹ MARTIN BUBER, *THE KNOWLEDGE OF MAN* 125 (1965) (quoting Carl Jung, *Von der Wurzeln des Bewusstseins*, in *PHYSIOLOGISCHE ABHANDLUNGEN IX* (Rascher ed., 1954)).

¹⁵² Ayling, *supra* note 69, at 1157–61.

¹⁵³ COX, *supra* note 17, at 71.

Nikolay may be viewed as a double or emanation of Raskolnikov. As Porfiry said about Nikolay, "on iz raskolnikov," which translated into English means "he is one of the schismatics."¹⁵⁴ Nikolay also symbolizes that part of Raskolnikov that wishes to confess, but in that sense everyone carries Nikolay within himself. Everyone has the urge to confess one's sins, which may bring about a false confession from the innocent. This urge is exacerbated under the pressure of isolation. Rogge assures us that

[i]f there is superimposed on this desolation from incarceration incommunicado the authority of a powerful totalitarian state and protracted questioning, usually without sufficient sleep and often at night, the primitive parts of one's mind will almost always without more pressure do the rest of the work for the examining authorities: one's guilt feelings, one's fear of the loss of love, the most painful feeling in the world, and of retaliation and punishment will make almost every human being confess to almost anything.¹⁵⁵

The pressure of custodial interrogation and the feeling of general guilt may join together to break down the accused person's will, who will then tell the interrogators what they want to hear.

IV. THE REQUIREMENT OF CORROBORATION

Raskolnikov's confession saves Nikolay from wrongful conviction. Cassell emphasizes that the ability to extract real confessions from guilty persons is the main cause of obviating the wrong conviction of the innocent.¹⁵⁶ Luckily, Porfiry was not a typical interrogator. He did not close the case after obtaining Nikolay's confession.¹⁵⁷ Nevertheless, we must wonder whether Porfiry would have continued the criminal proceedings against Nikolay had Raskolnikov declined Porfiry's invitation to confess. It is very possible that the answer is positive, since Porfiry did not release Nikolay from detention despite being convinced of his innocence. In the first encounter between Porfiry and Raskolnikov, Porfiry says to Razumihin, Raskolnikov's friend: "[Y]ou were talking my ears off about that

¹⁵⁴ GARY COX, *TYRANT AND VICTIM IN DOSTOEVSKY* 83 (1984). See also COX, *supra* note 17, at 90.

¹⁵⁵ ROGGE, *supra* note 148, at 242–43.

¹⁵⁶ Cassell II, *supra* note 11, at 502. For true voluntary confessions that saved the innocent, see REIK, *supra* note 19, at 127–29; Daina Borteck, Note, *Pleas for DNA Testing: Why Lawmakers Should Amend State Post-Conviction DNA Testing Statutes to Apply to Prisoners Who Pled Guilty*, 25 CARDOZO L. REV. 1429, 1443, 1448–49 (2004); White, *supra* note 12, at 1010.

¹⁵⁷ As interrogators often do. Leo & Ofshe, *supra* note 10, at 440. For the reasons that interrogators cease an investigation when the suspect confesses, see Sangero, *supra* note 12, at 2815–16.

Nikolay. . . of course, I know, I know very well,' he turned to Raskolnikov, 'that the fellow is innocent, but what is one to do?'"¹⁵⁸ In light of the great probative value ascribed to confessions, it is very tempting to continue the proceedings against a person who accepts responsibility for a crime.

Without Raskolnikov's confession, Nikolay's wrongful conviction could probably not have been prevented under the current legal system, which does not place significant obstacles in the way of confession-based convictions. Most jurisdictions require corroboration—i.e., proof independent of the confession—in regard to establishing the *corpus delicti* of the offense, but not the identity of the defendant as perpetrator of the crime.¹⁵⁹ In federal courts, the "Trustworthiness Doctrine," requiring that a confession should be corroborated by substantial independent evidence, has been adopted.¹⁶⁰ In England, the defendant's extrajudicial confession needs no corroboration and may be sufficient for conviction.¹⁶¹ Some scholars oppose the corroboration requirement, treating it as a "technical obstruction[] to the administration of justice."¹⁶² Others claim that full corroboration, or "strong corroboration" as Boaz Sangero terms it—meaning "objective, tangible, and significant evidence" that encompasses both the very commission of the crime and the identity of the perpetrator—is necessary in order to prevent unreliable confessions.¹⁶³

Indeed, a confession should be corroborated, since it is incapable on its own of distinguishing sufficiently between guilt and innocence.¹⁶⁴ The stress, fear, and anger that an innocent person experiences during a police interrogation might make him or her act like a guilty person who tries to deceive the interrogators.¹⁶⁵ Police interrogators are not "human lie detectors."¹⁶⁶ The United States Supreme Court recognized the difficulty in distinguishing between true and false confessions when it held that "though a statement may not be 'involuntary' within the meaning of this exclusionary rule, still its reliability may be suspect if it is extracted from one who is under the pressure of a police investigation—whose words may reflect the strain and confusion attending his predicament rather than a

¹⁵⁸ DOSTOYEVSKY, *supra* note 1, at 313–14.

¹⁵⁹ *Opper v. United States*, 384 U.S. 84, 93 (1954); Sangero, *supra* note 12, at 2803; Fisher & Rosen-Zvi, *supra* note 3, at 885–86. In offenses with no tangible *corpus delicti*, the corroboration must implicate the accused. *Smith v. United States*, 348 U.S. 147, 154 (1954).

¹⁶⁰ Sangero, *supra* note 12, at 2805; Fisher & Rosen-Zvi, *supra* note 3, at 886.

¹⁶¹ GUDJONSSON, *supra* note 117, at 130; Sangero, *supra* note 12, at 2806–11.

¹⁶² B. Don Taylor III, *Evidence Beyond the Confession: Abolish Arizona's Corpus Delicti Rule*, 41 ARIZ. ATT'Y 22, 23 (2005).

¹⁶³ Sangero, *supra* note 12, at 2791. See also LEO, *supra* note 15, at 284–85.

¹⁶⁴ Sangero, *supra* note 12, at 2820.

¹⁶⁵ GUDJONSSON, *supra* note 117, at 25–28; Danny Ciracò, *Reverse Engineering*, 11 WINDSOR REV. LEGAL & SOC. ISSUES 41, 51–52 (2001); Saul M. Kassin, *Human Judges of Truth, Deception, and Credibility: Confident but Erroneous*, 23 CARDOZO L. REV. 809, 812 (2002).

¹⁶⁶ LEO, *supra* note 15, at 226; Kassin, *supra* note 165, at 809.

clear reflection of his past.”¹⁶⁷ Under the *Miranda* safeguards, and in a situation of the proper conduct of the interrogation, we assume the voluntariness of a confession of guilt, while ignoring the inherent compulsion of custodial interrogation.¹⁶⁸

Another reason that corroboration is required is that a feeling of general guilt may induce an innocent person to give a false confession that imitates a true confession. Nikolay gives “very plausible answers on certain points.”¹⁶⁹ His confession seems to be true. Kneeling down, he declares before Porfiry: “I am guilty! Mine is the sin! I am the murderer. . . .”¹⁷⁰ The requirement of corroboration will discourage interrogators from focusing on obtaining confessions instead of gathering extrinsic evidence to establish the truth.¹⁷¹ Focusing on extrinsic evidence will help in the long run, as the Supreme Court emphasized in *Escobedo v. Illinois*, to make the criminal justice system more reliable.¹⁷² Even if it is impossible to conduct a more thorough investigation and gather more evidence in a specific case,¹⁷³ we should ask ourselves, as Pushkin asked in *The Captain's Daughter*, why confession to the police is trusted, but not denial in the court, when a defendant recants an extrajudicial confession and declares it unreliable. At least, we should adopt Leo and Ofshe's suggestion to treat confessions as neutral statements regarding guilt or innocence before their fit to the facts of the crime is scrutinized.¹⁷⁴

However, even a requirement of corroboration is insufficient to protect the innocent who confess from wrongful conviction, for a false confession could be corroborated with the same elements that evoked suspicion against the accused in the first place. In Nikolay's case, there indeed was strong corroboration—the jewelry of the murder victim that came into his possession without a credible explanation. In such a case, a wrongful conviction might be avoided only if significant knowledge of the facts of the crime was required in order to rely on a confession.

¹⁶⁷ *Smith v. United States*, 348 U.S. 147, 153 (1954).

¹⁶⁸ Kitai-Sangero, *supra* note 120, at 147–52.

¹⁶⁹ DOSTOYEVSKY, *supra* note 1, at 529.

¹⁷⁰ *Id.* at 412.

¹⁷¹ WOLCHOVER & HEATON-ARMSTRONG, *supra* note 122, at 29; Sangero, *supra* note 12, at 2817–18.

¹⁷² *Escobedo v. Illinois*, 378 U.S. 478, 488–89 (1964) (“[A] system of criminal law enforcement which comes to depend on the ‘confession’ will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation.”).

¹⁷³ As in some cases of infanticide: Taylor, *supra* note 162, at 26; or in offenses that require special intent in relation to this element: Fisher & Rosen-Zvi, *supra* note 3, at 902.

¹⁷⁴ LEO, *supra* note 15, at 307; Ofshe & Leo, *supra* note 127, at 991.

V. SIGNIFICANT KNOWLEDGE OF THE FACTS OF THE CRIME

Porfiry was certain that Nikolay, despite his confession, was not the murderer, since his answers did not reveal good knowledge of the details of the murder. As Porfiry said: "He answered me very plausibly on some points . . . But on other points he . . . simply . . . knows nothing and doesn't even suspect that he doesn't know!"¹⁷⁵ Raskolnikov knew the location of the stolen goods taken from the crime scene,¹⁷⁶ whereas Nikolay did not know this. Raskolnikov was also able to repeat the conversation that took place outside the victim's flat between the two people who had come to visit the victim and found her flat locked.¹⁷⁷

Leo and Ofshe suggest that a confession be regarded as reliable only if it fits "the facts of the crime to a reasonable degree."¹⁷⁸ Only the real perpetrator of the crime possesses such knowledge in the ordinary case.¹⁷⁹ In contrast, "[i]nnocent false confessors are often most ignorant of many of the crime scene details, making their post admission narratives replete with errors."¹⁸⁰ If the "significant knowledge of the facts of the crime" suggestion is adopted, it would prevent reliance on a confession, like Nikolay's, that does not produce the whereabouts of the stolen goods, and does not demonstrate knowledge of basic facts regarding the occurrence of the crime.

On the other hand, there are difficulties that inhere in the suggestion that the law condition reliance on confessions upon their fitting closely with the facts of the crime. As Paul Cassell notes,¹⁸¹ a true confession may also deviate from or lack all aspects of the actual event. Thus, Raskolnikov—the true murderer—did not remember "what the trinkets were like, or even how many there were."¹⁸² We know, of course, the reason for this lack of knowledge: Raskolnikov had abandoned the goods and lost all interest in them following the murder.

Paul Cassell additionally notes that a fitness requirement goes beyond the traditional tests of voluntariness.¹⁸³ Besides, it can be applied only to full

¹⁷⁵ DOSTOYEVSKY, *supra* note 1, at 531.

¹⁷⁶ *Id.* at 624.

¹⁷⁷ *Id.*

¹⁷⁸ Leo & Ofshe, *supra* note 10, at 438–39; Richard A. Leo & Richard J. Ofshe, *Missing the Forest for the Trees: A Response to Paul Cassell's "Balanced Approach" to the False Confession Problem*, 74 DENV. U. L. REV. 1135, 1142 (1997). See also LEO, *supra* note 15, at 286–87; Ayling, *supra* note 69, at 1191; Drizin & Leo, *supra* note 12, at 1003.

¹⁷⁹ LEO, *supra* note 15, at 286–87.

¹⁸⁰ *Id.* at 289.

¹⁸¹ Paul G. Cassell, *The Guilty and the "Innocent": An Examination of Alleged Cases of Wrongful Convictions from False Confessions*, 22 HARV. J.L. & PUB. POL'Y 523, 593 (1999).

¹⁸² DOSTOYEVSKY, *supra* note 1, at 624.

¹⁸³ Cassell, *supra* note 181, at 591.

confessions rather than to incriminating statements.¹⁸⁴ Thus, for example, if an accused person is deceived into making incriminating statements, such as during a conversation with an undercover agent, or if this person's conversations with an accomplice are monitored, the accused person only naturally may refuse to provide more details to the interrogators.

Even regarding full and conscious confessions, there may be holes in the confession in comparison to the actual event. There are various reasons for this gap. They may reflect an attempt to decrease the degree of one's guilt—for example, a criminal who confesses to murder may deny the rape that occurred before it¹⁸⁵—or it may involve problems of memory.¹⁸⁶ Memory problems may emanate from drunkenness or simply because we do not absorb every detail of our deeds or habitually do not notice certain elements, such as the clothes someone is wearing.

Furthermore, even a person who voluntarily confesses to a crime still has the urge for survival, which may cause him to play with the police in a game of confession and withdrawal, or the confessor may simply regret the confession and decline to cooperate further. This latter possibility should be taken into account in view of the conception that a criminal does have an urge to confess in order to be relieved of the burden of hiding an awful secret, even if a complete repentance is not felt, as perhaps was Raskolnikov's condition at the point of his confession. Perhaps the confessor has not yet fully undergone the process experienced by this Dostoyevsky character—a process that was not complete even at the point of his confession at the police station—and is at the stage in which Raskolnikov found himself when playing with Zametov in the tavern, where his words oscillated between confession and provocation.

The accused person's feeling that only confession can bring the intensive interrogation to a halt may cause the innocent and guilty alike to stop denying their guilt.¹⁸⁷ When a confession arises from the desire to cease the interrogation, the human survival urge may make the guilty person lie or conceal the complete details of the crime. Additionally, there may be bizarre explanations for not disclosing details, such as the refusal to reveal where the body of the victim is hidden as a manifestation of the murderer's revenge against the deceased person and the latter's family. It may be that a third party found stolen goods and removed them from their hiding place. Or the offender himself may simply want to maintain possession of the stolen goods after being released from prison. At any rate, a good explanation for the confessor's inability to provide details must be found. Indeed, such an explanation was found for Raskolnikov: "Finally some of the lawyers more versed in psychology admitted that it was possible he had really

¹⁸⁴ *Id.* at 591–92.

¹⁸⁵ *Id.* at 592–93.

¹⁸⁶ *Id.* at 594–95. On shame that prevents a full confession, see Leo & Ofshe, *supra* note 10, at 440.

¹⁸⁷ *Storytelling*, *supra* note 71, at 2–5; White, *supra* note 12, at 1019–21.

not looked into the purse, and so didn't know what was in it when he hid it under the stone."¹⁸⁸ Still, we may accept that the real culprit in a normal case would be capable of providing significant details about the event, or, alternatively, would be able to explain why he could not provide full details of the case.

VI. CONCLUSION

A person's mind is a complex piece of machinery. People want to portray themselves well but also have a compulsion to admit guilt. Dostoyevsky's story teaches us that innocent and guilty persons alike may confess to a crime and that the accused person's motives for confessing are not very clear; indeed, they are quite complicated. The feeling of general and unfocused guilt may induce a person to seek punishment through the commission of a crime, but it may also impel innocent persons to seek punishment through a confession.

There might be plausible reasons why a suspect who confessed to an accusation would not validate that confession through external, independent evidence, and would not provide significant details of the crime. Nevertheless, a confession that does not demonstrate good knowledge of the facts of the crime should normally be treated with suspicion as to its reliability and voluntariness. Such a confession is evidence that the confessor is not ready to accept responsibility for the crime. Under such circumstances, there is substantial danger that the motive that drove one to confess is extraneous to the actual truth or to the confessor's free will.

Normally, when a suspect reaches the point at which he or she is willing to take responsibility for the crime that was committed, it is difficult to understand why that person would admit to the crime but refuse to reveal the location of, say, the body or the stolen goods.¹⁸⁹ As *Crime and Punishment* teaches us, a willingness to take responsibility is the outcome of a mental process that the criminal undergoes. An accused person who translates this willingness to take responsibility into a confession is normally supposed to cooperate fully with the police. The analyses of Raskolnikov's and Nikolay's separate confessions in the novel support the conclusion that providing significant details of the crime should be a condition for relying on a confession.

The requirement of close consistency between the confession and the facts of the crime, however, will not save those who take responsibility for a crime they did not commit out of a desire to cover up the guilt of another person¹⁹⁰ or protect a person who confesses to a more serious offense (in terms of the mental element that is required), such as murder instead of negligent homicide.¹⁹¹ In certain cases,

¹⁸⁸ DOSTOYEVSKY, *supra* note 1, at 624.

¹⁸⁹ See also Sangero, *supra* note 12, at 2822 (regarding the corroboration requirement).

¹⁹⁰ GUDJONSSON, *supra* note 117, at 210; Taylor III, *supra* note 162, at 24.

¹⁹¹ Ayling, *supra* note 69, at 1188 (regarding the corroboration requirement).

the innocent person may be completely familiar with the details of the crime. Moreover, there is substantial danger that the suspect's knowledge of the details of the crime may be contaminated by facts fed to him by the police.¹⁹² A video recording that removes the secrecy surrounding police interrogations and helps to resolve factual controversies regarding the details of the interrogation,¹⁹³ as well as the mandatory presence of counsel,¹⁹⁴ may assure a greater degree of certainty that the suspect does not confess because of undue external pressures. Providing significant details regarding the commission of the crime is, therefore, not at all the end of the road to protecting innocent suspects from making false confessions. But it is a necessary beginning.

Trying to limit reliance on confessions reflects, of course, a value-based attitude toward confessions. Custodial interrogations inhere with a paradox: An extrajudicial confession should be voluntary in order to be admissible, but interrogations succeed precisely because they aim at persuading the accused person that she has no choice except to confess.¹⁹⁵ *Crime and Punishment* teaches us that if we truly want to be faithful to the requirements of voluntariness and reliability, then only a confession that reveals significant knowledge of the facts of the crime may testify to the real offender and to the fact that this person is willing to accept responsibility for the crime.

¹⁹² For this common danger, see LEO, *supra* note 15, at 169–73, 254–63. For more concrete examples of this danger, see Ronald J. Rychlak, *Interrogating Terrorists: From Miranda Warnings to "Enhanced Interrogation Techniques,"* 44 SAN DIEGO L. REV. 451, 463 (2007) (regarding *Brown v. Mississippi*, 297 U.S. 278 (1936)); White, *supra* note 12, at 983, 996, 999–1000, 1010. Indeed, as Ayling, *supra* note 69, at 1187, put it: "In many ways, the police are coauthors of the confession: they suggest—consciously or unconsciously—facts and story lines to the suspect. . . ."

¹⁹³ There is wide consensus among scholars regarding the desirability of video recording of interrogations. Laurie Magid, *The Miranda Debate: Questions Past, Present, and Future*, 36 HOUS. L. REV. 1251, 1305–06 (1999).

¹⁹⁴ For such a proposal, see Anne Elizabeth Link, *Supreme Court Review: Fifth Amendment—The Constitutionality of Custodial Confessions*, 82 J. CRIM. L. & CRIMINOLOGY 878, 891, 898–900 (1992); Charles J. Ogletree, *Are Confessions Really Good for the Soul?: A Proposal to Mirandize Miranda*, 100 HARV. L. REV. 1826, 1830, 1842 (1987).

¹⁹⁵ BROOKS, *supra* note 71, at 85; Mark A. Godsey, *Shining the Bright Light on Police Interrogation in America*, 6 OHIO ST. J. CRIM. L. 711, 712 (2009).

